

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

PHILIP SCOTT PEDERSEN,

Appellant.

No. 39094-9-II

UNPUBLISHED OPINION

Armstrong, J.—Philip S. Pedersen appeals his convictions for possession of a controlled substance and unlawful use of drug paraphernalia, arguing that all the evidence against him was seized following a warrantless vehicle search, incident to his arrest, in violation of the Fourth Amendment, as articulated in *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).¹ The State concedes that Pedersen is correct. We accept the State’s concession, vacate Pedersen’s convictions, and remand for dismissal.²

¹ A commissioner of this court initially considered Pedersen’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

² We need not resolve the differing opinions in *State v. Millan*, 151 Wn. App. 492, 499-500, 212 P.3d 603 (2009) (failure to move to suppress the evidence at trial waives any error associated with its admission), and *State v. McCormick*, 152 Wn. App. 536, 540, 216 P.3d 475 (2009) (“[J]ustice demands that similarly situated defendants whose appeals are pending direct review deserve like treatment following a change in the law.”) because Pedersen brought a CrR 3.6 motion to suppress the evidence.

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A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Houghton, P.J.

Hunt, J. — (dissenting) I dissent from the majority’s acceptance of the State’s concession of error and vacation of Pederson’s convictions based on *Arizona v. Gant*³ for the reasons stated in *State v Millan*, 151 Wn. App. 492, 499-500, 212 P.3d 603 (2009), *review granted*, No. 83613-2 (Wash. Feb. 10, 2010) and *State v Nyegaard*, No. 37829-9-II, 2010 WL 610764, (Wash. Ct. App. Feb. 23, 2010).

Hunt, J.

Hunt, J.

³ 556 U.S. ___, 129 S. Ct 1710, 173 L. Ed. 2d 485 (2009).